held liable by most courts, though the contract was unenforceable under the Statute of Frauds. *Rice* v. *Manley* (1878) 66 N. Y. 82; see (1910) 10 COLUMBIA LAW REV. 678; *contra, Davidson* v. *Oakes* (1910) 60 Tex. Civ. App. 60, 128 S. W. 944. The instant case, however, raises the question whether the defendant should be liable in tort when, had there been no prior lease, he would not be liable in contract. No liability attaches to an agent for misrepresenting his authority when the contract he makes would not bind his principal because oral. *Dung* v. *Parker* (1873) 52 N. Y. 494. But in such cases there is no misrepresentation of the principal's power to enter into the particular contract, and the agent would be answerable in tort for a fraudulent collateral undertaking. See *Thilmany* v. *Iowa Paper Bag Co.* (1899) 108 Iowa 357, 361, 79 N. W. 261; *Lamm* v. *Port Deposit Homestead Ass'n* (1878) 49 Md. 233, 240. The instant case is analogous to actions against infants for misrepresenting their age, whereby the plaintiff is induced to sell goods on credit. By the weight of authority in this country the defense of infancy will not avoid the defendant's liability in tort. *Rice* v. *Boyer* (1886) 108 Ind. 472, 9 N. E. 420; see Smith, *The Law of Frauds* (1907) §296; *contra, Slaton* v. *Barry* (1900) 175 Mass. 513, 56 N. E. 574. In the instant case the plaintiffs are not seeking to enforce the parol agreement. Their action is based on positive fraud. Recovery in such a case cannot open the way to abuses against which the statute is directed because it allows compensation only for actual loss sustained. Where a case on all fours with the instant case came up in Mississippi the court allowed recovery. *Welch* v. *Lawson* (1856) 32 Miss. 170. It is submitted that "the right not to be led by fraud to change one's situation is anterior to and independent of the contract," see *National Bank & Loan Co.* v. *Petrie* (1903) 189 U. S. 423, 425, 23 Sup. Ct. 512, and the defense of the Statute of Frauds was properly disallowed in the instant case.

EIGHTEENTH AMENDMENT—NATIONAL PROHIBITION ACT—FOREIGN SHIPS—AMERICAN SHIPS.—Several foreign steamship companies sought an injunction against the confiscation from foreign ships within United States territorial waters of sealed liquors destined for the use of passengers and crew at sea. *Held,* injunction denied, since the carriage of liquors in question is illegal transportation within the inhibition of the National Prohibiton Act. *Cunard S. S. Co. et. al.* v. *Mellon et al.* (D. C. S. D. N. Y. 1922) 68 N. Y. L. J. 341.

An American steamship line sought an injunction *pendente lite* on the same grounds and also against any imposition of penalties for selling liquor on the high seas or in foreign ports. *Held,* ships of American registry are American territory within the meaning of § 3 of the Act whether on the high seas or in foreign ports. *Internat. Mercantile Marine Co.* v. *Stewart* (D. C. S. D. N. Y. 1922) 68 N. Y. L. J. 495.

Ship stores have always been considered part of the ship's equipment and are exempt from payment of duties. See (1894) 21 Opin. Atty. Gen. 92; (1799) 1 Stat. 661, U. S. Comp. Stat. (1916) § 6603; Tariff Act of 1922, § 446. They are manifested separately from the cargo. 1 Stat., *supra;* Tariff Act, *supra,* § 432. They include intoxicating liquors for beverage purposes for both passengers and crew. (1799) 1 Stat. 650, U. S. Comp. Stat. (1916) § 6592; *The Satellite* (D. C. 1910) 188 Fed. 717; *The Penn* (C. C. A. 1921) 273 Fed. 990 (*semble*); see *U. S.* v. *23 Coils of Cordage* (U. S. 1832) Gilp. 299, 304. After the Eighteenth Amendment, until October 1922, liquors in ship stores were exempted from the operation of the Act. See (1919) 37 Treas. Dec. 287; (1920) 32 Op. Atty. Gen. 96; *U. S.* v. *254 Bottles* (D. C. 1922) 281 Fed. 247, 248 (as to foreign ships, not as to American ships). It seems that no general law has ever been applied to them; they have been controlled solely by specific mention in the laws and rulings *supra.* They are not mentioned expressly in the Eighteenth Amendment or in the National Prohibition Act. There-

fore, it would seem that this Act, in spite of the stipulation in § 3 that it shall be liberally construed, should not be applied to them. It can scarcely be said that the policy of the Act is to regulate the consumption of liquors by foreigners abroad. Yet such would be the effect of prohibiting liquors in ship stores for consumption by foreign passengers and crews on the high seas. Such an interpretation would involve obvious and serious questions of the conflict of laws and the comity of nations. But, assuming that the Act does so apply, it seems that American ships on the high seas are not included within the scope of the operation of the Amendment or of the supplemental Acts. In both instances the words used are "territory subject to the jurisdiction" of the United States. (1919) 40 Stat. 1941, U. S. Comp. Stat. (Supp. 1919) § 2768; (1922) 30 Fed. Stat. Sup. 130. The use of the fiction of the territorial character of vessels would involve difficult situations in foreign ports in view of the laws of some European countries requiring that a ration of liquor shall be served to the crews of all vessels.

EVIDENCE—ADMISSION BY SILENCE.—In a prosecution for rape, the state offered evidence that after the mother of the prosecutrix, in the presence of the defendant's wife, had accused the defendant and he had denied the accusation, the wife said that she knew he was guilty, and that she had heard of his doing such things before. *Held,* one justice dissenting, that the defendant's failure to repeat his denial was not an admission, and the evidence offered was inadmissible. *People* v. *Countryman* (App. Div. 4th Dep't 1922) 195 N. Y. Supp. 728.

Formerly, in practice, all statements made in a party's presence were received in evidence against him as an admission, on the maxim that silence gives consent. This rule, however, is logically subject to qualifications, which are now generally recognized. See 2 Wigmore, *Evidence* (1904) § 1071. Statements made in the presence of the accused may be shown in evidence, only when they are of a character naturally calling for a reply, and when his failure to deny them would be an implied admission of their truth. *Vinson* v. *State* (1914) 10 Ala. App. 61, 64 So. 639. Such statements are always to be received with caution, *Moore* v. *Smith* (Pa. 1826) 14 Serg. & R. 388, especially when they are made, not by a party to the controversy, but by a stranger. *Larry* v. *Sherburne* (1861) 84 Mass. 34. In the instant case, the wife knew nothing about the crime charged, and the defendant having already denied the accusation, may not have felt called upon to repeat his denial. Evidence of the commission of criminal acts other than the particular ones charged in the indictment is generally inadmissible. *People* v. *Buffom* (1915) 214 N. Y. 53, 108 N. E. 184. Accordingly, the defendant's failure to deny his wife's charges of other acts of rape was not admissible. *State* v. *Shuford* (1873) 69 N. C. 486.

INJUNCTION—SPECIFIC PERFORMANCE—LIQUIDATED DAMAGES.—The defendant contracted to sell all his cranberries through the plaintiff association, and not to sell to anyone else. Damages were agreed upon at the rate of $1.00 per box for each box the defendant failed to sell through the plaintiff. The plaintiff asked an injunction restraining the breach of the contract. *Held,* injunction granted. *Washington Cranberry Grower's Ass'n* v. *Moore* (Wash. 1922) 204 Pac. 811.

Where there is a contract which is normally within equitable jurisdiction and a forfeiture is provided for the purpose of securing its performance, equity will grant relief. *Koch* v. *Streuter* (1905) 218 Ill. 546, 75 N. E. 1049. But where the contract stipulates that the obligor has the alternative of performing the contract or paying a certain amount of money in lieu thereof, the obligee is left to his remedy at law. See *Koch* v. *Streuter, supra,* 552. Whether the forfeiture is a penalty to enforce performance or the price of non-performance is to be gathered